

EXHIBIT “D-4”

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK

3 * * * * *

4 SIDNEY MANES, Administrator of the Estate of HECTOR
5 RIVAS,

6 Plaintiff,

7 No. 19-CV-844 (BKS) (TWD)

8 - against -

9 ONONDAGA COUNTY; CITY OF SYRACUSE; WILLIAM
10 FITZPATRICK; DR. ERIK MITCHELL; AND "JOHN DOES 1-10",

11 Defendants.

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17 **EXAMINATION BEFORE TRIAL** of

18 **SIDNEY MANES**, Plaintiff, taken pursuant
19 to Notice, via videoconference by Zoom,
20 held in New York State on October 19, 2022,
21 and taken by LISA M. SCHUSTER, Court
22 Reporter and Notary Public, in and for
23 the State of New York.
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2
3 APPEARANCES:

4
5 For the Plaintiff:

6 BOUSQUET HOLSTEIN, PLLC.
7 360 S. Clinton Street
Syracuse, New York 13202
BY: JAMES SONNEBORN, ESQ.

8 THE LAW OFFICES OF JOSHUA MOSKOVITZ, P.C.
9 392 Central Avenue, 7803
Jersey City, New Jersey 07307
10 BY JOSHUA MOSKOVITZ, ESQ.

11 SCOTT A. KORENBAUM, ESQ.
12 14 Wall Street, Suite 1603
New York, New York 10005
BY: SCOTT KORENBAUM, ESQ.

13
14 For the Defendants William Fitzpatrick and Erik Mitchell:

15 ROBERT F. JULIAN, PC.
16 2037 Genesee Street
Utica, New York 13501
17 BY: ROBERT JULIAN, ESQ.

18 For the Defendant Onondaga County:

19 ONONDAGA COUNTY DEPARTMENT OF LAW
20 421 Montgomery Street
Syracuse, New York 13202
21 BY: MARK VENTRONE, ESQ.

22 PARROTTA STUDIOS
23 Rochester, New York
David Parrotta, Videographer
24
25

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S T I P U L A T I O N S

IT IS STIPULATED by and between the attorneys for the respective parties that the testimony contained herein may be used upon the trial of this action; that the filing of the testimony is waived; that all objections, except objections as to form, are reserved until the time of trial, and that objections as to form shall be noted on the record; that the examining party will furnish the examined party a copy of the transcript of testimony free of charge and that the testimony be taken before **Lisa M. Schuster**, a Shorthand Reporter and Notary Public in and for the State of New York, whose oath is waived.

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1 VIDEOGRAPHER: It's October 19th, 2022 and
2 the time is 9:36 a.m. and we are back on the
3 record.

4 MR. KORENBAUM: Mr. Julian, if I may just
5 real briefly, two things. One is Mr. Manes
6 reserves his right -- I want to just put on the
7 record that Mr. Manes reserves his right to
8 review his testimony once we conclude and that
9 will hopefully be by day's end. The other
10 thing is when you have an opportunity, there's
11 a clarification of one of the answers that
12 Mr. Manes gave yesterday that he would like to
13 make whenever you'd like to do that.

14 MR. JULIAN: Well, let's do it now. This
15 is probably the right time.

16 MR. KORENBAUM: So does Mr. Manes have to
17 be sworn first?

18 MR. JULIAN: I waive it. I mean, he was
19 sworn yesterday, so --

20 MR. KORENBAUM: Why don't you just ask him
21 that he acknowledges that he's still under
22 oath.

23 **S I D N E Y M A N E S, having been called as a witness**
24 **and being previously duly sworn, testified as follows:**

25 **EXAMINATION BY**

1 **MR. JULIAN:**

2 Q. You acknowledge you're still under oath, right,
3 Mr. Manes?

4 A. Yes.

5 MR. JULIAN: Okay.

6 MR. KORENBAUM: So yesterday, Mr. Julian,
7 you asked him questions about whether Mr. Rivas
8 had received any emotional counseling while
9 incarcerated, and I believe my notes reflect
10 that Mr. Manes said he didn't know, but he'd
11 like to clarify that with your permission.

12 MR. JULIAN: Yes, please.

13 THE WITNESS: During Mr. Rivas'
14 interrogation -- incarceration, a man visited
15 him on a number of occasions, his name was Joe
16 O'Brien. Mr. O'Brien was a lawyer and he was
17 not practicing, he was a church priest or a
18 church counselor and he met with Rivas on a
19 number of occasions, primarily because he
20 believed in him, and number two, because he was
21 counseling with him. I didn't realize that
22 that was the case, but that's what it turned
23 out to be. He was counseling. They not only
24 met at Sing Sing, but when Mr. Rivas was
25 transferred to Syracuse, Mr. O'Brien came to

1 Syracuse and visited him in the justice's
2 center. So I needed to tell you that, I didn't
3 realize. Yes, that he was counseling with
4 Hector all during his incarceration.

5 Q. Do you know if Mr. O'Brien is still alive?

6 A. Yes.

7 Q. Have you had contact --

8 A. To the best of my knowledge.

9 Q. I'm sorry?

10 MR. KORENBAUM: He said to the best of his
11 knowledge.

12 THE WITNESS: Yes.

13 MR. JULIAN: Okay. And when we have a
14 disconnect, Scott, feel free to jump in and
15 just --

16 Q. Do you know where he's located approximately?

17 A. To my knowledge, he's in Albany.

18 Q. Have you ever seen any records generated by
19 Mr. O'Brien with regard to the counseling sessions?

20 A. No.

21 Q. All right.

22 A. I had a number of conversations with him.

23 Q. All right. Can you summarize those
24 conversations, please?

25 A. He very much believed in Hector's innocence.

1 They talked about a lot of things, and he was there for
2 Hector as a counselor I learned. I never knew that other
3 than the fact that he was, and that's what he was doing
4 and that's what we discussed.

5 Q. Anything specifically that you can tell me
6 about the detail of the counseling?

7 A. Other than what I've already told you?

8 Q. Correct.

9 A. That's what I remember, Mr. Julian.

10 MR. JULIAN: Okay. Thank you. This
11 morning I sent an article from the Central New
12 York News dated October 21st, 2012. And Lisa,
13 could we mark it, please? I'm not sure where
14 we left off, so if we could mark it as Exhibit
15 AAA for today's date, that won't confuse things
16 much.

17 (Deposition Exhibit AAA marked for
18 Identification)

19 MR. JULIAN: Could you put the article up,
20 please, Mr. Parrotta?

21 Q. Mr. Manes, do you remember seeing this article
22 about you?

23 A. Yes.

24 Q. All right. And did you see it when it first
25 came out?

1 A. Yes.

2 Q. All right.

3 MR. KORENBAUM: Mr. Julian, just one
4 moment, please. I'm just going to note my
5 objection to these, to the questions. We
6 received this about 15 minutes -- approximately
7 about 9 a.m., 9:15. And obviously I'm going to
8 allow you to ask questions about it, but just
9 note my objection as he hasn't had an
10 opportunity to review it today.

11 MR. JULIAN: Sure.

12 MR. KORENBAUM: But note my objection.
13 I'm not stopping you from questioning.

14 MR. JULIAN: Yeah. Thank you. And he's
15 welcome to review it now. My questions really
16 only involve one, two sentence paragraph of the
17 article; however, I think. And if we could go
18 to page five of the article, please? There we
19 go.

20 Q. Now, if you see where the star is located,
21 Mr. Manes. Right there. I'm going to read to you the
22 two sentences I want to ask you about.

23 A. Yes, I've read it.

24 Q. All right. And then could you read the
25 sentence below, also?

1 MR. KORENBAUM: I'm sorry. Where are you
2 asking him to read, Mr. Julian?

3 MR. JULIAN: Sure. I apologize for the
4 confusion.

5 Q. So first please read the following sentences:
6 "Rivas' trial lawyer, Richard Calle, testified at a
7 hearing in 1999 that he didn't recall ever seeing those
8 reports before the murder trial. If he had, he would
9 have used them to support his argument that the murder
10 was on Saturday night and that someone other than Rivas
11 did it, Calle testified." Next sentence, "A lawyer who
12 handled the Rivas appeal in the mid-1990's, Richard
13 Priest, said in an Affidavit that he'd reviewed Calle's
14 file and didn't recall seeing those police reports." My
15 question is when you read this, did you ask Mr. Priest
16 for a copy of Calle's file?

17 A. No.

18 Q. Why not?

19 A. I don't know why not. I can't answer why not.
20 I read it. I knew Mr. Priest, but I didn't think to ask
21 him for his file.

22 Q. Did you ever ask Mr. Priest for his file?

23 A. Not to my knowledge.

24 Q. Did you ever file with Mr. Priest a
25 substitution of attorney?

1 A. No.

2 Q. Were you representing Mr. Rivas on
3 October 21st, 2012?

4 A. I was never the attorney of record. I was a
5 pro bono counsel trying to help Mr. Rivas recover
6 documents that occurred during his trial. I
7 participated, not with Mr. Priest but certainly with
8 Mr. Schuman and with Mr. Langone. I -- yes, so that was
9 the extent of my work. I stayed involved but was never
10 -- I did not prepare other documents or lawsuits or
11 anything else.

12 Q. Well, when you say you were never the attorney
13 of record, I don't want to go through all of the
14 appearance, but can we agree that you appeared on behalf
15 of Mr. Rivas in a number of courts?

16 A. Yes, I participated and sat second chair.

17 Q. But your appearance was noted as appearing on
18 behalf of Mr. Rivas in a number of courts, correct?

19 A. Primarily in the Federal courts but not until
20 after the 440 and it went into the Federal courts, then I
21 was much more involved than I was in the state courts
22 other than making FOIL requests.

23 Q. Who was representing Mr. Rivas, apart from
24 yourself, in 2012?

25 MR. KORENBAUM: Objection to the form of

1 the question. Mr. Manes can answer.

2 A. 2012. That was Mr. Richard Langone primarily.
3 That was also Mr. Edward Klein, those were primarily the
4 two lawyers.

5 Q. Did you ever ask them to obtain the Calle file
6 from Mr. Priest?

7 A. Not that I recall.

8 Q. When did Mr. Schuman represent Mr. Rivas, to
9 your recollection?

10 A. In the 440 motion before Judge Brunetti.

11 Q. Okay. Did you ever ask -- you were present for
12 that, correct?

13 A. Yes.

14 Q. Did you ask Mr. Schuman to obtain a copy of
15 Mr. Calle's file from Mr. Priest?

16 A. I never did that, no.

17 Q. You're aware that his appeal was handled by yet
18 another attorney, is that correct?

19 A. Yes.

20 Q. Who handled his attorney -- the appeal with
21 Mr. Priest?

22 A. I don't know. I have no idea.

23 Q. Okay. Now, you've referenced --

24 MR. KORENBAUM: One second.

25 MR. JULIAN: What's that?

1 MR. KORENBAUM: Go ahead.

2 Q. You've referenced Langone and Klein as
3 representing Mr. Rivas. Were you satisfied with their
4 representation?

5 MR. KORENBAUM: Objection to the form of
6 the question. You can answer.

7 A. Yes, I was satisfied with Mr. Langone's
8 representation, yes.

9 Q. How about Mr. Klein's?

10 A. Yes.

11 MR. KORENBAUM: Objection to the form of
12 the question.

13 THE WITNESS: Oh, excuse me.

14 MR. KORENBAUM: You can answer.

15 A. Yes.

16 Q. Do you know if either of them ever asked for
17 adjournments of Judge Miller?

18 MR. KORENBAUM: Objection. You can
19 answer.

20 A. Yes.

21 Q. Yes what, do you know?

22 A. Yes.

23 Q. Did they?

24 MR. KORENBAUM: I'm sorry, Mr. Julian.
25 What's the question?

1 Q. Sure. I apologize. Did they ask for Judge
2 Miller to give adjournments in the retrial of Mr. Rivas?

3 A. Yes. The only one was that that was Mr. Klein
4 when we were sent back to Judge Miller's court to have a
5 retrial.

6 Q. Did you object to Mr. Klein requesting
7 adjournments?

8 MR. KORENBAUM: Objection. He can answer.

9 A. We discussed it and he was -- he was in charge
10 and he had justification for saying that once he had all
11 of the information from the district attorney's office,
12 he'd be ready for trial. They were waiting for a report
13 in regard to DNA samples of the pipes, DNA samples of a
14 number of things, and Mr. Moran kept saying they were not
15 available yet and so he was not ready for trial so he
16 kept saying, Mr. Moran kept saying, "he was ready," and
17 Mr. Klein said, "well, I don't have the documents." And
18 so it was adjourned again and again and again, because
19 the district attorney was not able to get the analysis of
20 the DNA and other things that were necessary.

21 Q. Was a trial date established and existent at
22 the time of Mr. Rivas' death?

23 A. It was to be done immediately.

24 Q. Was a trial date --

25 A. Immediately.

1 Q. Was a trial date existent as of the date of
2 Mr. Rivas' death?

3 A. Yes.

4 Q. And did Mr. Rivas pass away before that date?

5 A. One week before the trial date.

6 Q. Was a Miss Kim Zimmer also representing
7 Mr. Rivas at that time?

8 MR. KORENBAUM: Objection. What time?

9 MR. JULIAN: Up to the point of trial from
10 the time the last second circuit decision up to
11 the time of trial.

12 A. I'm sorry. The second circuit decision? I
13 don't know what --

14 MR. KORENBAUM: His question is was Kim
15 Zimmer representing Mr. Rivas at any point from
16 the time of the final second circuit decision
17 requiring the new trial or granting the writ of
18 habeas corpus to the trial date, to the retrial
19 date when Hector died.

20 A. I believe that Ms. Zimmer came onboard with
21 Mr. Klein's request to Judge Miller after the case was
22 sent back to Judge Miller for a retrial. I don't believe
23 she participated -- well, I beg your pardon. She also
24 participated in a Federal court hearing before Judge
25 Peoples in regard to expanding on the justification for

1 his -- for Hector's being having a gateway past the
2 ADPPA.

3 MR. KORENBAUM: That's not his question.
4 His question is from the second circuit grant
5 to the writ of habeas corpus his trial date,
6 was Ms. Zimmer his counsel? It would have been
7 in the state court action.

8 A. No.

9 MR. JULIAN: Can we go now to Exhibit A,
10 please? And can we go to page 37 of the First
11 Amended Complaint, paragraph 224?

12 Q. Mr. Manes, in this Complaint, there's a Cause
13 of Action alleged against the county, the city and
14 Fitzpatrick, it's called a Monell claim, do you see that?

15 A. First let me read it.

16 Q. Sure. Take as much time as you need.

17 A. What was the question, please?

18 MR. KORENBAUM: He hasn't asked it yet.

19 A. Oh, all right. Okay. I've read it.

20 Q. Thank you. When you commenced this lawsuit,
21 what was your factual basis for suing the City of
22 Syracuse?

23 MR. KORENBAUM: Object to the form of the
24 question. Mr. Manes can answer it.

25 A. I believe the police department was under the

1 control of the county.

2 Q. And what did the police department --

3 A. The city. Excuse me.

4 Q. I have no idea what -- if something was said, I
5 couldn't hear it, so --

6 A. Oh, I'm sorry. The police, I believe, were
7 under the control of the city, they were part of the city
8 administration.

9 Q. All right. And what was your criticism or
10 criticisms of the police?

11 A. To the best of my recollection, there were
12 other people that were available to be talked to and
13 examined and reports filed that were never shown to me or
14 I don't know whether they were ever shown to Mr. Klein
15 during the trial period that we were getting ready. The
16 district attorney kept handing out partial reports but
17 never what we asked for in total, and so I felt the
18 police department had a responsibility to make sure that
19 they did everything to find the correct person to charge
20 for murder.

21 Q. Any other -- in your opinion, any other
22 failures or complaints about the conduct of the police in
23 this case?

24 A. Well, an issue that was -- no, I guess -- they
25 went to Hector's apartment and examined the apartment

1 under the auspices of a warrant that were signed by
2 justice -- by Judge McKinney, and in a review of his
3 apartment, they took a number of pictures, but then they
4 testified that Mr. Rivas had a statue, a religious statue
5 and a candle that was burning but never took a picture of
6 it, but that's what one of the policemen testified to.
7 Mr. Rivas totally denied that. So there was those little
8 things.

9 Q. All right. Anything else?

10 A. I'm not sure what kind of an interrogation they
11 did to the Patsy Barric -- I can't think of her last
12 name, his last name.

13 MR. KORENBAUM: Barricella.

14 A. Barricella who said he committed the murder or
15 the stalker who was known in the neighborhood of where
16 she lived. These were people who were certainly suspect,
17 and I thought they didn't do a great job in interviewing
18 them and present that as a defense.

19 Q. All right. Were you aware of anything about
20 their conduct as to whether or not the police conduct was
21 conduct they had behaved -- that they had engaged in in
22 other cases prior to this?

23 MR. KORENBAUM: Object to the form of the
24 question. You can answer it if you can.

25 A. I can't answer that.

1 MR. JULIAN: All right. You can take down
2 the Complaint.

3 Q. You testified about Dr. Cyril Wecht and his
4 opinions, do you recall that?

5 MR. KORENBAUM: Object to the form of the
6 question, but if you recall that, you can
7 answer.

8 A. At this time or at any other time?

9 Q. Good point. Let me ask the question in a
10 different way. During the course of your depositions
11 over the several days that we've done them, you've made
12 several references to Dr. Wecht, Dr. Cyril Wecht, am I
13 correct?

14 A. Yes.

15 Q. And have you -- and you've relied upon his
16 opinions, in part, in terms of bringing this lawsuit,
17 correct?

18 MR. KORENBAUM: Object to the form of the
19 question, but Mr. Manes can answer it.

20 A. To the best of my knowledge, yes.

21 Q. Now, have you -- what is your awareness of
22 Dr. Wecht's background?

23 MR. KORENBAUM: Object to the form of the
24 question, but Mr. Manes can answer it.

25 A. He provided a vitae of his background and the

1 books that he had published on the talks he had given,
2 the reports he had filed and the number of examinations
3 he had done, and he was a foremost authority.

4 Q. Are you aware that he was the coroner of
5 Allegany County?

6 A. Yes.

7 Q. Are you aware that Allegany County sued him and
8 took a judgment against him for \$172,410 for doing his
9 private work on county time with county facilities?

10 MR. KORENBAUM: Objection. Mr. Manes can
11 answer.

12 A. No.

13 Q. Were you aware that he ultimately reached a
14 settlement with the county and repaid the county \$200,000
15 in or around 1992?

16 MR. KORENBAUM: Objection. Mr. Manes can
17 answer.

18 A. No

19 Q. Are you aware that he was indicted twice?

20 MR. KORENBAUM: Objection. Mr. Manes can
21 answer.

22 A. No.

23 Q. You're not aware of any of the details of those
24 indictments?

25 A. No.

1 Q. Mr. Manes, are you aware of any disciplinary
2 action taken against Dr. Mitchell by any state agency or
3 entity against him personally?

4 A. To my knowledge, the Department of
5 Environmental Conservation had a number of citations that
6 were issued against Dr. Mitchell and his operation as
7 medical examiner of the County of Onondaga. If I recall,
8 there was over a hundred charges, citations in regard to
9 blood being poured down the sink, body parts being
10 boiled, body parts being destroyed, body parts being
11 boiled and buried, those were charges from the Department
12 of Environmental Conservation.

13 Q. Are you aware of any finding made personally
14 against Dr. Mitchell by DEC?

15 A. I don't understand the question. Repeat it,
16 please.

17 Q. Well, the question -- you've told me about the
18 charges. I'm asking you are you aware as to whether or
19 not the DEC leveled any fines or disciplinary action
20 against Dr. Mitchell personally with regard to those
21 charges?

22 A. No, I don't know that.

23 Q. Are you aware of any finding or penalty or fine
24 ever leveled against Dr. Mitchell personally by the state
25 health department?

1 A. I know they admonished him for how he ran the
2 department as medical examiner, and that they assigned a
3 monitor to oversee his actions, and that they made a
4 number of suggestions of correction, and that was as a
5 result of hearings that took place with the Department of
6 Health in which the district attorney was an attendant.
7 As far as the DEC is concerned --

8 MR. KORENBAUM: He's asking about DOH.

9 A. Oh, the DOH. Okay.

10 Q. So my question again is was there any finding
11 or fine leveled personally against Dr. Mitchell, to your
12 knowledge, by the state health department?

13 A. I don't know that, no.

14 Q. Have you ever learned of any disciplinary
15 action taken by the New York State Health Department
16 Professional Conduct Department?

17 MR. KORENBAUM: Objection to the form of
18 the question. That was -- it didn't come out
19 right, Mr. Julian. Can you rephrase it?

20 MR. JULIAN: I agree. Yeah. You got it.

21 Q. Are you aware of any action taken by the State
22 of New York and its commission on professional conduct
23 against Dr. Mitchell finding him in violation either
24 ethically or in terms of practice?

25 A. Well, they appointed a monitor over his

1 administration of the medical examiner's office.

2 Q. Are you aware of any finding by the state
3 health department that Dr. Mitchell violated either
4 ethically or in terms of his practice any specific -- let
5 me reframe the question.

6 Has Mr. Mitchell had any license -- strike
7 that.

8 Has Dr. Mitchell received any disciplinary
9 determinations by the New York State Health Department
10 with regard to his license?

11 A. Not to my knowledge, other than appointing the
12 monitor.

13 Q. Have you ever been told by anyone that
14 Dr. Mitchell was not a suspect in the Nanette Gordon
15 case?

16 A. Would you repeat the question, please?

17 MR. JULIAN: Sure. Actually, Lisa, could
18 you just read it back, please?

19 (The requested material was read)

20 A. No.

21 Q. Have you ever been told by anyone that the
22 district attorney's office identified a suspect in the
23 Nanette Gordon case?

24 A. Yes.

25 Q. Who told you that?

1 A. I believe it was the sheriff's department.

2 Q. And who did they say the suspect was?

3 A. A young man whose mother or father were
4 involved in maintaining the apartments in which Miss
5 Gordon lived, and he was a son, and he was a suspect.

6 Q. Do you know why he wasn't indicted or charged?

7 A. No, I do not know.

8 Q. Did he pass away before he could be indicted or
9 charged?

10 A. Not to my knowledge.

11 Q. Who told you from the sheriff's department of
12 this?

13 A. Sorry. I can't remember that.

14 MR. JULIAN: Okay. I'm going to pass the
15 witness to Mr. Ventrone.

16 **EXAMINATION BY**

17 **MR. VENTRONE:**

18 Q. Good morning, Mr. Manes.

19 A. Good morning.

20 Q. Hi. Mark Ventrone. I represent the County of
21 Onondaga in this action.

22 You just testified about the Nanette Gordon
23 homicide, Mr. Julian asked you a few questions about that
24 suspect, the suspect in that case. Was he a maintenance
25 worker in Nanette Gordon's building?

1 A. I'm not sure I remember anything being told to
2 me that he was a -- I know he was involved in the
3 building, but I don't know what his job was.

4 Q. Do you remember or recall the last name
5 Stackhouse?

6 A. I'm sorry. Would you repeat that, please?

7 Q. Do you recall hearing at or about that time
8 that his last name was Stackhouse?

9 A. No, I'm sorry. I can't remember that.

10 Q. Okay. Yesterday Mr. Julian asked you about a
11 case that was commenced, I believe you said you referred
12 a medical malpractice case to Attorney Michelle Rudderow,
13 do you recall that?

14 A. Yes.

15 Q. And I believe you testified that the case
16 settled. It was a medical malpractice case and it
17 settled for \$25,000?

18 A. Yes.

19 Q. Wasn't that case in the court of claims against
20 Upstate Medical Center for medical malpractice?

21 A. I believe that was the case, but I'm not sure
22 it was settled on the malpractice or it was settled
23 against the county for the treatment that Mr. Rivas had
24 in the justice department or in the jail. I think the
25 better person to answer that would be Miss Rudderow.

1 Q. Do you recall that there was an action
2 commenced against the county in supreme court and a
3 separate action against Upstate in the court of claims?

4 A. Yes, I believe that was the case.

5 Q. And do you recall that the action against the
6 county was voluntarily discontinued?

7 A. I don't know that.

8 Q. Did you represent the Rivas estate in surrogate
9 court in order to get their approval of the \$25,000
10 settlement?

11 A. Yes.

12 Q. Would you have documents in that regard?

13 MR. KORENBAUM: Objection to the form of
14 the question, but Mr. Manes can answer it if he
15 understands it.

16 A. Would you repeat the question, please?

17 Q. Would you have any documents, your Petition,
18 any pleadings in regards to your appearance seeking
19 approval by the surrogate court?

20 A. Yes, there are documents by legal requirement.

21 Q. And would you have those documents in your
22 possession in your file?

23 A. They would probably be in the file at the
24 office.

25 MR. VENTRONE: I would make a request for

1 any such documents that they be produced.

2 We'll join the same pattern that Mr. Julian is
3 following in regards to the requests for any
4 documents, we'll put it in writing.

5 MR. KORENBAUM: Meaning you'll commit that
6 to writing? I believe that was the --

7 MR. VENTRONE: I will, yes.

8 Q. Mr. Manes, you testified a few minutes ago that
9 you were in court before Judge Miller with Ed Klein and
10 ADA Robert Moran, I believe that was back in 2016,
11 correct?

12 A. Yes, to the best that I remember.

13 Q. Do you recall Judge Miller indicating he was
14 going to adjourn the trial date at that time because
15 Mr. Langone had indicated he was going to withdraw?

16 A. Yes.

17 Q. Do you also recall at that time that Mr. Klein
18 indicated to the court that this was a complex case and
19 he too would need more time?

20 A. I don't remember the exact conversation or the
21 -- between the judge and Mr. Klein --

22 Q. Okay.

23 A. -- it's on the record.

24 MR. VENTRONE: Okay. I'm going to refer
25 to, if we can call up Exhibit A, the Complaint,

1 page 38.

2 Q. Mr. Manes, I'm going to ask you to look at
3 these paragraphs 225 through 228, your allegations on
4 page 38 for a few minutes, just please take a look at
5 that page.

6 A. Could you scroll up a bit, please? Thank you.
7 Okay. I've read it.

8 Q. So going back to paragraph 225, do you see
9 where it says, "Defendants County," and then I'm going to
10 jump, "by their policymaking agents, servants and
11 employees authorized sanctioned and/or ratified the
12 defendant's wrongful acts"?

13 A. Yep, I see that.

14 Q. Who are you alleging at the county did that?

15 A. The defendant's county, Onondaga County by one
16 of their -- by the district attorney of the County of
17 Onondaga who testified before Judge Brunetti that certain
18 documents that were shown to Mr. Calle and that were
19 discussed by Mr. Schuman, that there were documents that
20 were not listed as being shown to the defendant's counsel
21 which might have made a difference in the outcome of the
22 trial. And the district attorney acknowledged, but he
23 also said at that time, that I remember, that he was sure
24 they were listed and yet they were not, and Judge
25 Brunetti accepted that because Mr. Fitzpatrick said very

1 clearly, "I always do that, John, or Judge Brunetti," and
2 that was the end of that. There were instances of that
3 nature in regard to the trial of Mr. Rivas.

4 Q. Okay. I'm going to move to reserve to move to
5 strike that as nonresponsive. But be that as it may, 225
6 still, Mr. Manes, what are the defendant's wrongful acts
7 that you are claiming or alleging in that paragraph that
8 were ratified?

9 A. The fact that there were exculpatory material
10 that was not provided to Mr. Calle.

11 Q. Is this the same material that Mr. Julian asked
12 you about yesterday and you indicated Mr. Calle decided
13 not to ask for an adjournment?

14 MR. KORENBAUM: Objection to the form of
15 the question. Mr. Manes can answer.

16 A. I was not at the trial. I don't know that.

17 Q. Okay. I'm sorry. I thought I heard you
18 indicate that Mr. Calle was given the opportunity to seek
19 an adjournment and he chose not to.

20 A. That's in the record.

21 Q. Did you read that in the record?

22 A. Did I what?

23 Q. Did you see that in the record?

24 A. Yes, I think I did.

25 MR. VENTRONE: Okay. Paragraph 226 of the

1 Complaint, if we could call up the Complaint
2 again, Exhibit A.

3 Q. The first line of 226, Mr. Manes, "The actions
4 of the defendants resulted from and were taken pursuant
5 to de facto policies and/or well-settled and widespread
6 customs and practices." What were those or what are
7 those de facto policies and well-settled and widespread
8 customs and practices of the county that you are
9 alleging?

10 MR. KORENBAUM: Object to the form of the
11 question, but Mr. Manes can answer it.

12 A. To my knowledge, there were a number of Brady
13 material to exculpate -- that were exculpatory and that
14 why not presented, those were the documents that might
15 have helped Mr. Rivas' defense in obtaining an acquittal.

16 Q. Okay. So that's in the Rivas case.

17 A. Yes.

18 Q. Are you familiar with any practices -- are you
19 familiar with any such practices prior to or other than
20 the Rivas case?

21 MR. KORENBAUM: Object to the form of the
22 question, but Mr. Manes can answer it.

23 A. Well, I'm familiar with the Nanette Gordon
24 case, yes. I'm also -- yes. Okay.

25 Q. But there was no indictment in the Nanette

1 Gordon case, was there?

2 A. Not to my knowledge, no.

3 Q. Do you base the allegations in paragraph 226 on
4 anything else?

5 MR. KORENBAUM: Object to the form of the
6 question, but Mr. Manes can answer it.

7 A. The Walid Daniel case I was involved in that
8 was prosecuted by Edward Menkin on behalf of the district
9 attorney of the County of Onondaga.

10 Q. Mr. Manes, wasn't Mr. Walid -- hello.

11 MR. KORENBAUM: Hi, Mr. Ventrone. We've
12 been going almost an hour. I'm not saying stop
13 right now, but if you can get to a good
14 stopping point and then we can take a short
15 break.

16 MR. VENTRONE: Okay. Sure.

17 MR. KORENBAUM: I'm not saying now, just
18 get to a good point.

19 MR. VENTRONE: Okay. That's fine.

20 Q. Mr. Manes, you just mentioned a Walid Daniel
21 case?

22 A. Yes.

23 Q. And that's the basis of your allegations in
24 paragraph 226?

25 A. You asked me if there was anything else that

1 resulted in my -- in 226. That's another case that I
2 remember that I was involved in, and that was also
3 questionable in regard to the result of the trial.

4 Q. Did you represent Walid Daniel?

5 A. I was just asked to participate by Mr. Langone
6 who was arguing to vacate the judgment of conviction.

7 Q. Walid Daniel was convicted, was he not?

8 A. Yes.

9 Q. I think of murdering his wife, correct?

10 A. Say it again, please.

11 Q. Of murdering his wife, is that correct?

12 A. Yes, that's correct.

13 Q. Was Attorney Sal Piemonte the defense counsel,
14 trial counsel?

15 A. I don't know. I don't remember at this point.

16 Q. Okay. And what are you alleging in regards to
17 paragraph 226 was done in this regard in the Walid Daniel
18 case?

19 A. I think it had to do primarily with the
20 evidence that was presented by Dr. Mitchell and pursued
21 by Mr. Menkin.

22 Q. Okay. Let's look at paragraph 227. And what
23 were the widespread customs and practices that you are
24 alleging in line two?

25 A. The utilization, I think, of Dr. Mitchell again

1 being involved in a case that was suspect and resulting
2 in a conviction.

3 Q. And what case was that in reference to 227?

4 A. The Walid Daniel case.

5 Q. Okay. And who are the supervisory and
6 policymaking officers and officials of Onondaga County
7 that you allege in line 3?

8 A. The district attorney, the medical examiner.

9 Q. Anybody else?

10 A. Not that I can recall.

11 MR. VENTRONE: Okay. We're at the bottom
12 of page 38. This is probably a good time if
13 you want to take that break before we continue.

14 MR. KORENBAUM: Perfect. All right.
15 Thank you.

16 VIDEOGRAPHER: It's 10:36 a.m. and we're
17 going off the record.

18 (Whereupon, a recess was taken)

19 VIDEOGRAPHER: It's 10:52 a.m. We're back
20 on the record.

21 Q. Mr. Manes, I'm going to ask you to look at page
22 39 of the Complaint, Exhibit A, paragraphs 229 through
23 232.

24 A. Okay. I've read it.

25 Q. Okay. Paragraph 229, and I direct your

1 attention to line 4, starting with the failure to
2 instruct them in applicable provisions, what is your
3 basis for those allegations?

4 MR. KORENBAUM: Object to the form of the
5 question, but Mr. Manes can answer it.

6 A. Well, it seems to me that in the three cases
7 that I was involved in, that there seemed to be a close
8 connection between the district attorney's office and the
9 medical examiner, and in all three cases, Brady material
10 was not provided, people were not interviewed,
11 documentation was not provided under the Brady rules, and
12 this seemed to be somewhat of, you know, thank God I was
13 only involved in three cases, which was Nanette Gordon,
14 Walid Daniel and Hector Rivas. Two were found guilty and
15 one was no investigation completed. It just led me to
16 believe that there was a lack of proper training or some
17 sort of tandem relationship between the sheriff - not the
18 sheriff - well, yes, the law enforcement group, the
19 district attorney and the medical examiner's office.

20 Q. But, Mr. Manes, on the Nanette Gordon matter
21 there was no indictment, correct?

22 A. Ha. There was no finding of a criminal who did
23 the act. They abandoned their investigation. To my
24 knowledge, they never interviewed or spent any time with
25 the possible subject of Dr. Mitchell, he disappeared for

1 six hours. He wrote a 28-page letter for his wife. None
2 of that was provided or discussed.

3 Q. But we also talked this morning about a suspect
4 in this matter, correct, the lone suspect?

5 A. Yes.

6 Q. Do you remember me asking you that question?

7 A. About the suspect?

8 Q. Yes.

9 A. Yeah. There was a young man you stated he was
10 in the maintenance department or something, yes. Yes,
11 but so was Dr. Mitchell.

12 Q. There was no trial on that matter, correct?

13 A. No. It's still a closed case.

14 Q. Okay. Mitchell was never charged, was he?

15 A. No, he was not.

16 Q. Okay. Looking at paragraph 230, The actions
17 detailed herein were and are consistent with
18 institutionalized practices of the county and others.
19 What are you making reference to, what are these
20 institutionalized practices that you allege in paragraph
21 230 of the Complaint?

22 MR. KORENBAUM: I object to the form of
23 the question, but Mr. Manes can answer it.

24 A. I don't know what you mean. Can you define
25 "institutional practices" for me?

1 Q. I'm asking you the same thing.

2 A. Oh, that's true. Okay. Well, I can't answer
3 that at the moment other than the fact that there are
4 penal codes that to me did not seem to be followed in
5 regard to the Brady material, the failure to mark
6 documents in the record, I guess that's the best I can
7 tell you.

8 Q. Was there Brady material that was withheld from
9 any defendants in the Nanette Gordon matter?

10 A. Not to my knowledge, other than the fact there
11 were documents that we never were privy to like the 28-
12 page letter that Dr. Mitchell wrote to his wife after
13 they found him asleep in the car six hours later after
14 her death, that's the Nanette Gordon case. We never knew
15 about the interview of the defendant's wife and asked her
16 to respond to the letter, we never saw that investigated.
17 To my knowledge, he was never interrogated. That's what
18 I can tell you. These are policies that I --

19 Q. Okay. I'll reserve my right to move to strike
20 again as nonresponsive.

21 A. Okay.

22 Q. And in paragraph 232, that first line, who are
23 you alleging at the county had prior notice of the
24 vicious and unlawful propensities of the defendants
25 Fitzpatrick and Mitchell and other subordinates?

1 A. Well, the murder of Valerie Hill occurred six
2 years approximately before they decided to reinvestigate
3 and rebring on the -- open the cold case of Valerie Hill
4 and charge Hector Rivas with her murder when he had gone
5 through an interrogation for 12 hours at the time of
6 death, after the time of death by the police and they
7 said they could find no relationship between him and
8 Valerie that he had caused her death, and yet six years
9 later they had indicted him without any new testimony or
10 any new evidence that was found. This was a cold case
11 that was totally reexamined by the medical examiner who
12 now found a way to enlarge the time of death struck me as
13 a little unusual.

14 Q. And so that is your basis for the allegations
15 in paragraph 232, correct?

16 A. That's part of it, certainly.

17 Q. Okay. Can we look at page 40, paragraph 233,
18 subparagraphs A through E?

19 A. How far did you want me to look?

20 Q. Right through subparagraph E, A through E.

21 A. Okay. I've read them.

22 Q. So going to let's say subparagraph A, line 2,
23 other claims of misconduct and evidence of unlawful acts
24 committed by the county, what were those, what are those,
25 what are you alleging there?

1 A. In the retrial of Mr. Rivas, it took almost a
2 year of requesting documents which were never provided in
3 one fell swoop. Every time there was an adjournment,
4 there seemed to be more documents that were found deeply
5 buried in boxes that were provided to Mr. Klein. There
6 was also documentation that we haven't found to this day.
7 Dr. Wasserman did an analysis on I think it was DNA
8 information of certain things that Dr. Wasserman did.
9 Nobody ever heard of Dr. Wasserman except me because it
10 was all in the record that I reviewed. And
11 Dr. Wasserman, who I talked to, said without question he
12 sent those documents to the district attorney's office.
13 Now, you know, you just can't keep finding more and more
14 things when you're asked to prepare for trial and the
15 district attorney doesn't give privy to you until
16 whenever there's an adjournment, again he goes to the
17 bottom of the list, he says, because that's what the lab
18 does. He never came up with the DNA on the pipe, never.
19 I mean -- and Dr. Wasserman's review of documentation of
20 examination, the Brady material that was buried, the
21 information in regard to any number of things that they
22 kept prolonging. It took a year when the circuit court
23 said you shall trial this case in 60 days. It never
24 happened. Judge Miller said he won't do it. Now, that's
25 all part of the county problem. You know. The district

1 attorney, the county, the medical examiner, these are all
2 under county auspices. I don't know why they don't
3 review what the DA is doing and what the medical examiner
4 is doing. They render --

5 Q. Okay. Other than the Rivas case, your
6 allegations in these paragraphs consistently refer to
7 other claims, prior claims. I want to know what the
8 other claims of misconduct in evidence of unlawful acts
9 committed by the county were.

10 A. Through its district attorney and through its
11 laboratories and through its department of the district
12 attorney, documents were withheld, they were not
13 provided, even on my FOIL requests, you don't know how
14 many I made. I was never given what I was asked to
15 receive. I mean, it took a long time to get whatever
16 documents I was lucky to get. I had to get a court order
17 once from Judge Burke. These were things that I should
18 have gotten by law. All of this to prevent, if you'll
19 forgive me, proving that Hector was an actual innocent
20 person in jail.

21 Q. So, again, you're talking about the Rivas
22 matter, correct?

23 A. Yes.

24 Q. Okay.

25 A. I'm also talking about Nanette Gordon.

1 Q. But nobody was actually charged in that matter,
2 correct?

3 A. Yes, but it was a poor job of investigation on
4 the police department and sheriff's department.
5 Sheriff's department is under the control of the county.

6 Q. Nobody was tried in that matter, correct?

7 A. You're correct, no one was tried.

8 Q. Okay. Can we go to page 41?

9 A. You forget who I --

10 MR. KORENBAUM: Sidney, there's no
11 question.

12 THE WITNESS: Okay. No question. Sorry.

13 Q. Page 41, please, look at subparagraphs F
14 through I.

15 A. Did you say I, as well?

16 Q. Yes, the bottom of page 41.

17 A. Okay.

18 Q. If we look at paragraph I, lines two and three.

19 A. Okay.

20 Q. "Known to be irresponsible in their dealings
21 with citizens of the community," what's the basis for
22 that, what do you mean by that?

23 A. You know the district attorney has the
24 obligation to prosecute those that are suspects in
25 different crimes. He has at his disposal the sheriff's

1 department, city police department, the medical
2 examiner's office. All of these people work towards
3 providing the district attorney with information
4 substantiating a crime.

5 In the Hector Rivas case, the second circuit in
6 just reviewing documents that we provided to the second
7 circuit found that Hector was actual innocent, actual
8 innocent, and yet we have a district attorney who is in
9 control of the file and he works with the medical
10 examiner continued to believe and prosecute Hector when,
11 in fact, there was documentation that he could have given
12 to Mr. Calle, the ineffective counsel of Hector's, which
13 might have affected the decision by the jury. His job is
14 to, you know, provide safety for their citizens, not in
15 this case. In Hector's case he did everything he could
16 to convict him, including the testimony by Dr. Mitchell
17 changing the time of death which eliminated Hector's
18 alibi. Those are jobs that --

19 Q. Okay. So basically I'm going to reserve the
20 right to move to strike again as nonresponsive,
21 repetitious. So essentially that's your basis for the
22 allegations in subparagraph I?

23 MR. KORENBAUM: Object to the form of the
24 question, but Mr. Manes can answer it.

25 A. Well, I don't know what the question is. Do

1 you want more examples?

2 Q. Not if they're nonresponsive and repetitious.

3 A. Well --

4 Q. I'm fine. We can move on. Let's move on to
5 page 42, J through N.

6 A. I've read them.

7 MR. KORENBAUM: You've only read through
8 L.

9 THE WITNESS: Oh, L. Oh, there's more.
10 Okay.

11 Q. That's fine. Let's just look at J, K and L for
12 not, that's fine. In paragraph -- J, K, L, right there.
13 In paragraph K, line 1 and 2 -- lines 1 and 2, how did
14 the county -- how is it alleged that the county failed to
15 investigate or respond to citizen complaints, what are
16 those citizen complaints that you're alleging?

17 A. Well, as I remember, without family's approval,
18 the medical examiner buried body parts, sold body parts,
19 gave away body parts, buried body parts, poured blood
20 down the sink without the families knowing that their
21 loved ones were being buried without parts. Nobody
22 oversaw what the medical examiner was doing. So there
23 were complaints, as I understand it, in listening to some
24 of the people who worked there, like Dr. Sawyer, like
25 Dr. Menchel, like Dr. - I don't know - there were more

1 doctors after Mitchell. The case -- the medical examiner
2 was a disaster and the district attorney utilized
3 Dr. Mitchell.

4 You know, the district attorney when Hector was
5 granted a new trial, the district attorney is quoted in
6 the newspaper as saying, "I hope he rots in jail." You
7 know, you don't say things like that in public. This was
8 a criminal who was subsequently found actually innocent.

9 Q. So that is your basis for the allegations --
10 that is your basis for the allegations in paragraph K?

11 A. Yes, that's the best I can remember.

12 Q. Okay.

13 A. There were other complaints, no question, that
14 were subsequently discovered by the department of health
15 and the department of environmental conservation against
16 the medical examiner's office and the district attorney's
17 office.

18 Q. And do you know, as you sit here today, as to
19 whether the county responded or investigated any such
20 complaints?

21 A. Absolutely. Yeah. They had a hearing. Yeah,
22 the district attorney sat in on that hearing, he was
23 perfectly aware of what they were charging the medical
24 examiner. This all came out at the hearing.

25 Q. This was prior to Rivas, was it not?

1 A. No, I don't believe so, whether it was prior to
2 -- I can't remember the timing.

3 Q. Okay. Let's look at page 43. Actually, I'm
4 sorry. Let's go back to the bottom of 42, M and N.

5 A. You said N.

6 Q. Looking at line one of M.

7 A. Okay.

8 Q. Other than Rivas, the Rivas matter that you're
9 involved with, how was the county, County of Onondaga,
10 encouraging the arresting prosecution and conviction of
11 innocent persons? Who are those other innocent persons?

12 A. In what case?

13 MR. KORENBAUM: He's asking you.

14 Q. I'm asking you that.

15 A. Oh. Well, I would say Hector Rivas, I would
16 say Walid Daniel, and both cases seemed to have had
17 similar stories that didn't -- it's just --

18 MR. KORENBAUM: Just answer the question.

19 THE WITNESS: Yeah, I'm trying to. I
20 don't know how. I guess that's -- I can't.

21 A. I know the activities of Dr. Mitchell.

22 MR. KORENBAUM: What's the question?

23 A. Yeah. What's the question?

24 Q. Any other cases?

25 A. That's the only three I was involved in.

1 Q. And really that's two, correct? Nanette Gordon
2 was not really a trial, correct, nobody was charged,
3 correct?

4 A. That's correct, nobody was charged in the
5 Nanette Gordon case so they had suspects.

6 Q. Okay. At any time over the years, did you ever
7 submit any letters to the new local newspapers
8 complaining about our district attorney Fitzpatrick?

9 A. I wrote an eight-page letter to Judge Brunetti
10 in regard to the 440 motion that he heard and I urged him
11 to reconsider, and he said take the case to the Federal
12 court on a habeas corpus.

13 MR. KORENBAUM: Can we have one second,
14 please?

15 MR. VENTRONE: Okay. Sure.

16 A. What's the question, please?

17 MR. KORENBAUM: Can we hear the last
18 question back, please?

19 (The requested material was read)

20 A. To the best of my knowledge, I was interviewed
21 by the newspapers and that's where the information that
22 they used came from. I don't remember mailing any
23 evidence or any documents that I was utilizing through
24 the newspapers.

25 MR. VENTRONE: Okay. I think that's all I

1 have. I'm going to pass the ball back to
2 Mr. Julian if he has anything further.

3 MR. JULIAN: Mr. Manes, is it --

4 MR. KORENBAUM: Hold on. Wait a minute.
5 One second. I mean, if you have one or two
6 questions, Mr. Julian, that's fine.

7 MR. JULIAN: I do.

8 MR. KORENBAUM: But you asked. I
9 reasonably believe that you were done answering
10 questions. If you have a question or two, I'm
11 okay with that, but I'm not okay with you
12 reopening your examination.

13 MR. JULIAN: Well, I'm not sure under what
14 rule that occurs, but I only have a couple
15 questions. But as you know when lawyers say
16 that, they're not believable, so let's see.
17 Okay?

18 MR. KORENBAUM: You ended your
19 questioning. You're done. You said I have no
20 further questions.

21 MR. JULIAN: No, no. What I said is I
22 pass the witness.

23 MR. VENTONRE: I think that's right.

24 MR. KORENBAUM: I'll allow a couple of
25 questions.

1 MR. JULIAN: That's very nice of you.

2 Thank you.

3 **EXAMINATION BY**

4 **MR. JULIAN:**

5 Q. Was Robert Wildridge the district attorney
6 during the Nanette Gordon case when you sued the county
7 and district attorney and others?

8 A. I'm sorry. I don't remember.

9 Q. All right. And then my only other question,
10 two others questions. Do you have copies of your many
11 FOIL requests that you say were not fully responded to?

12 A. Would you repeat the question, please?

13 Q. Sure. Do you have copies of your FOIL requests
14 that you've referenced in your testimony?

15 A. The best that I remember was when --

16 MR. KORENBAUM: The question is do you
17 have copies of the FOIL requests.

18 A. I don't know.

19 Q. I'll make a request for them and follow the
20 same protocol.

21 And finally, do you have any knowledge as to
22 what Brady material or other materials provided by the
23 district attorney was in Mr. Calle's file?

24 A. No, I have no idea.

25 MR. KORENBAUM: I object to the form of

1 the question. Can you repeat that, please?

2 I'm sorry.

3 MR. JULIAN: Why don't you read it back,
4 it will be faster.

5 (The requested material was read)

6 MR. KORENBAUM: Object to the form of the
7 question, but Mr. Manes can answer.

8 A. I was not at the trial, but I -- I don't know.

9 Q. And just for completeness, fair to say you
10 never requested a copy of Mr. Calle's file from him or
11 anybody else?

12 A. I'm sorry. I don't remember that.

13 MR. JULIAN: Okay. Thank you. All set.

14 MR. KORENBAUM: Thank you very much. And
15 again, thank you accommodating my schedule.

16 MR. JULIA: You're welcome.

17 VIDEOGRAPHER: It is 11:27 a.m. We're
18 going off the record.

19 (Whereupon, the examination concluded)

20 -oOo-

CERTIFICATE OF WITNESS

I, SIDNEY MANES, hereby certify that I have read the foregoing transcript of my deposition taken on October 19, 2022, at approximately 10:30 a.m., in New York State pursuant to the applicable Rules of Civil Procedure and that the foregoing 49 pages of the transcript are in conformity with my testimony given by me, under oath, and at the time and place indicated herein, (with the exception of any corrections made by me on the errata sheet).

SIDNEY MANES

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the _____ day of _____, 2022.

NOTARY PUBLIC

My commission expires _____ day of _____, 20____.

REPORTER'S CERTIFICATE

I, **LISA M. SCHUSTER**, a Shorthand Reporter and
Notary Public in and for the State of New York, DO HEREBY
CERTIFY;

that the foregoing proceedings were taken via
videoconference at the time and place therein set forth,
at which time the witness was put under oath by me;

that the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

that the foregoing is a true and accurate
transcript of my stenographic notes in the above-entitled
matter.

I further certify that I am not a relative or
employee of any attorney or of any of the parties, nor
financially interested in the action.

Dated: November 28, 2022

Lisa M. Schuster